IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13159 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHAN DINDAYAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13159 of 2003

MR BY MANKAD for Petitioner No. 1

MR MR MENGDEY, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by respondent No.1 - Deputy Secretary, Home Department, State of Gujarat dated 15.7.2003 in dismissing the appeal preferred by the petitioner and confirming the order passed by respondent No.2 dated 26.8.2002 by which the application of the petitioner for licence to possess fire arm came to be rejected.

#. Mr.B.Y.Mankad, learned advocate appearing on behalf of the petitioner, has submitted that as one person fired at the petitioner for which even the complaint came to be filed by the petitioner, being CR No.I 317 of 2001. The petitioner submitted the application to respondent No.2 on 21.12.2001 for granting licence of fire arm for his personal defence. It is the case of the petitioner that in spite of the fact that the Police Inspector, Gandhidham Police Station as well as Deputy Superintendent of Police, Anjar recommended to grant licence, respondent No.2 by order dated 26.8.2002 rejected the application on the basis of some report / opinion of the D.S.P. which was not given to the petitioner. Being aggrieved by and dissatisfied with the same, the petitioner preferred the appeal before the State Government under Section 18 of the Arms Act which also came to be dismissed and hence the present petition is filed under Article 226/227 of the Constitution of India.

#. Mr.Mankad, learned advocate appearing for the petitioner, has submitted that while considering the application of the petitioner, licencing authority is required to consider the report of the officer, in-charge of the nearest police station which is in favour of the petitioner, and, therefore, respondent No.2 ought not to have refused to grant licence on the basis of the report/opinion of the D.S.P. He submitted that consideration of the report submitted by the D.S.P. itself was illegal. He further submitted that even the report / opinion of the D.S.P. which is relied upon by respondent No.2 while rejecting the application has not been given to the petitioner either to meet with the same and/or to controvert the same and the same has been relied upon behind the back of the petitioner. Under the circumstances, the impugned order is in breach of the principles of natural justice. Mr.Mankad has relied upon unreported judgment of this Court (Coram: C.K.Thakkar,J) (as he then was) in the case of Ajitsinhji Godji Jadeja Vs. State of Gujarat rendered in Special Civil Application No.5890 of 1987 dated 30.3.2000 .

#. Mr.Mengdey, learned AGP appearing on behalf of the respondents, has submitted that considering the report / opinion of the D.S.P. respondent NO.2 has taken the decision. He submitted that, in fact, the D.S.P. has opined not to give licence to the petitioner, and, therefore, if relied upon that opinion, if the decision is taken not to grant licence, it cannot be said that any illegality is committed by respondent No.2.

#. Heard the learned advocates for the parties.

#. On going through the documentary evidence, which is produced by respondent no.2 along with the additional affidavit-in-reply and on considering the inquiry form itself, it is very clear that the Police Inspector, Gandhidham Police Station and Deputy Superintendent of Police, Anjar have given their opinions in favour of the petitioner. Under the circumstances, in fact, respondent no.2 was required to consider the report submitted by the officer in-charge of the nearest police station, i.e. in the present case, Police Inspector, Gandhidham Police Station. There is logic behind the same that he is the officer who can know the situation and condition better than any other person, because, he is the officer in-charge of the nearest police station. Under the circumstances, as such respondent No.2 has materially erred in not accepting the application of the petitioner and in not granting the licence to the petitioner for fire arm in spite of the opinions given by the Police Inspector, Gandhidham Police Station and Deputy Superintendent of Police, Anjar. Even except the fact that the D.S.P. has stated that there is no opinion, nothing further is mentioned in the inquiry form at all. Nothing has been mentioned as to on what basis the D.S.P. has stated that no opinion is given. Even the copy of the opinion, if any, given by the D.S.P. not to grant licence to the petitioner is also not supplied to the petitioner. Thus, relying upon the document which is not given to the petitioner is nothing, but in violation of the principles of natural justice. Under the circumstances, the impugned order passed by respondent no.2 which is confirmed by respondent no.1 in appeal is required to be quashed and set aside and is hereby quashed and set aside. Consequential order passed by the appellate authority in rejecting the appeal and confirming the order passed by respondent No.1 is also required to be quashed and set aside and is hereby quashed and set aside. The matter is remanded to respondent No.2 for passing a fresh order on its own merits and in accordance with law considering the report submitted by the Police Inspector, Gandhidham Police

Station as well as the report of the Deputy Superintendent of Police, Anjar and also to consider even the latest report after calling them from the Police Inspector, Gandhidham Police Station and Deputy Superintendent of Police, Anjar. Such exercise is required to be done within a period of two months from the date of receipt of the writ of this order. If respondent No.2 wants to rely upon any other opinion, then opportunity should be given to the petitioner to meet with the same and respondent No.2 to give such opinion to the petitioner so that the petitioner can represent his case.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)